

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS LEE MORRISON,

Plaintiff,

v.

GISELLE MATTISON, *et al.*,

Defendants.

Case No. 2:23-cv-00850-JDP (PC)

ORDER

Plaintiff brings this section 1983 case against various defendants responsible for oversight of the California Department of Corrections and Rehabilitation, including Governor Gavin Newsom. ECF No. 11 at 2. He alleges that he caught the COVID-19 virus several times and that, despite defendants' attempts to protect prisoners with vaccines and associated boosters, defendants broadly failed to provide inmates sufficient ventilation and cleaning supplies to protect themselves. ECF No. 11 at 3. These allegations are insufficient to state a claim. I will offer plaintiff one final opportunity to amend before recommending that this case be dismissed.

Screening Order

I. Screening and Pleading Requirements

A federal court must screen a prisoner's complaint that seeks relief against a governmental entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, "'a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

II. Analysis

Plaintiff alleges that defendants failed to provide CDCR inmates with proper ventilation and cleaning supplies. ECF No. 11 at 3. Plaintiff's complaint is deficient on multiple levels. First, he offers no allegation as to how each defendant was personally involved in this failure and how each violated his rights through his or her own actions or inaction. Second, plaintiff has not offered any detailed allegations that link the lack of proper ventilation or cleaning supplies with his own contraction of COVID-19 multiple times. I will offer plaintiff one final opportunity to amend before recommending this action be dismissed for failure to state a claim.

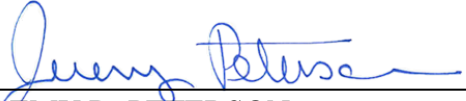
Plaintiff is advised that the amended complaint will supersede the current complaint. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current complaint no longer serves any function. Therefore, in an amended complaint, as in an original complaint, plaintiff will need to assert each claim and allege each defendant's involvement in sufficient detail. The amended complaint should be titled "Second Amended Complaint" and refer to the appropriate case number.

Accordingly, it is ORDERED that:

1. Within thirty days from the service of this order, plaintiff may file an amended complaint. If he does not, I will recommend this action be dismissed.
2. The Clerk of Court is directed to send plaintiff a complaint form.

IT IS SO ORDERED.

Dated: October 7, 2023


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE